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No. 10,186

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MATSON NAVIGATION COMPANY
(a corporation),
Appellant,

vs.

CHARLES HANSEN,
Appellee.

BRIEF FOR APPELLEE.

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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BASIS OF ACTION.

The cause of action is that set forth in the "Statement of Pleadings and Facts Showing Jurisdiction" in the Opening Brief of Appellant. Briefly, the action was brought under the Jones Act for personal injuries sustained by Charles Hansen while employed as an able-bodied seaman on a vessel belonging to the defendant, Matson Navigation Company.

The cause was tried before the honorable A. F. St. Sure without a jury, and judgment was rendered for plaintiff. From this judgment in favor of plaintiff the defendant appeals.

STATEMENT OF FACTS.

The vessel, "Mauna Lei", owned by the defendant company, sailed from San Francisco to Honolulu. Hansen was an able-bodied seaman on the vessel. Before the vessel sailed a very large load of steel beams usually referred to as "I" beams or "H" Column was stored on the deck on both port and starboard sides. These beams were very heavy and were from 40 to 60 feet in length. The steel beams occupied practically all of the free space on the deck and no walkways were provided over the beams, and in order to walk either fore or aft it was necessary to walk inboard close to the hatches, combings and houses. The beams had not been shored (T. p. 66). By shoring, of course, is meant placing braces of either wood or steel against the object to be shored so that the beams could not spread, fall or tumble but would remain in place. Instead of shoring the beams two temporary lashes made of chain were placed around the beams (T. p. 66). On the first night out from San Francisco some sea was encountered and the beams fell over and were in effect strewn all over the deck. The photographs introduced in evidence will show the condition of these steel beams, the hatches of the vessel, the mast house, to which reference will be hereinafter made, and other deck details.

The steel beams remained in this very uneven condition from the time the vessel first encountered the sea until they reached Honolulu. The beams were so heavy and so long and there were so many of them that it was impossible to restack these beams so as to

put them in a safe condition (T. p. 66). On the day before the vessel arrived in Honolulu the Master decided to "top" the booms. By this is meant that the booms of the forward mast were to be raised to working position. These booms, while the vessel is at sea, are "cradled", that is, put out horizontally from the mast, the base, of course, resting on its pin in the mast, and the end of the boom resting in an iron collar or rest at the other end of the boom in order to keep the boom fast while not in use and to keep it from swaying or swinging in the event there is a sea. The Captain wished to top the booms or get them in working position in order to save time when the vessel arrived at Honolulu or at least to get the booms in shape for the unloading operations.

In this "topping" operation four or five men are used. The operation was under the supervision of the First Mate, a Mr. Rosen.

They started to top both the port and starboard forward booms at the same time. A winch is, of course, used in topping the booms, and this winch was operated by the Boatswain, Peter Lecht. Mr. Hansen, the plaintiff, was stationed on the starboard side of the vessel where he was to handle a guide line attached to the end of one of the booms for the purpose of steadying the boom as it was raised (T. p. 25). Mr. Hansen was standing at the side of the starboard forward mast house, the starboard mast rising from the top of the mast house at that point. The mast house and the mast will be shown on the pictures introduced in evidence. The cleat around which Mr.

Hansen was paying out the guide line was attached to this starboard mast house. The starboard winch was about four feet forward of the point where Hansen was stationed. The Boatswain was inboard of Mr. Hansen about five or seven feet forward and the Mate, Mr. Rosen, was on the center line of the ship on the Number One hatch or about twenty feet forward from Mr. Hansen and about fifteen or twenty feet forward of the Boatswain.

All hands were at their stations, and Mr. Rosen gave the order to heave away. The booms were raised about eight feet when one of the booms fouled on a line and both winches were stopped (T. p. 68).

In this topping operation a block, both port and starboard, was placed on the outboard rigging, and a line (cable) ran through the block on the rigging through another block on the starboard mast house as part of this operation. The block on the mast house is shown on the pictures in evidence.

When the booms were stopped on this first attempt to raise them, Mr. Lecht, the Boatswain (who, of course, is the superior officer of the plaintiff) told Hansen to take a small piece of line and put a stopper on the block which was attached to the outboard rigging (T. pp. 29-30-69). In other words, during this halt in the operation the Boatswain deemed it advisable to tie a piece of rope under the block on the rigging so that the block wouldn't slip from its position and cause a line to foul or other trouble. Hansen took a small piece of line and did as he was directed (T. p. 29). In doing this Hansen had to climb over

this deck load of steel to get to the block, the sea was rolling and there was "a lot of grease" and oil on the steel (T. p. 29). The steel was sticking out in all directions (T. p. 70), and there was oil all around the deck (T. p. 70), and there was a ground swell (T. p. 70).

In returning to his post from where he put the stopper on the block is when the accident occurred. Hansen had to walk over this very rough and uneven load of steel beams which had considerable oil on them and just before he reached his post they again started to raise the booms. As Hansen was nearing the inboard side of this pile of beams he slipped or stumbled. He involuntarily put his hand out and involuntarily grabbed the line that was running in the block on the mast house, and his hand was drawn into the sheave of the block, and his hand was badly mangled (T. p. 30).

FINDINGS OF FACT.

The Trial Court in its findings of fact found that the defendant company failed to provide the plaintiff with a safe place to work in that the steel beams were stored aboard the vessel in a negligent manner, that they were difficult and unsafe to walk upon and that there was oil in and about the place where plaintiff was working, and also on the steel beams over which plaintiff was required to work and walk.

The appellee attacks these findings both as to their support in the record and to their sufficiency as a matter of law to support the judgment.

ARGUMENT.

FACTS.

That the findings of the Trial Court are amply supported by the evidence has been proved by our references to the Transcript in which we have shown that this heavy deck load of steel was about five feet high (T. p. 94) and weighed about seventy tons (T. p. 95) and occupied all the available deck space (T. p. 90); was only held in place by temporary lashings and no attempt was made to shore it by means of either wood or steel shores (T. pp. 90-95). The steel beams fell out of place so that they presented a very uneven and dangerous (T. p. 29) place to walk. In addition to that, there was oil all around where Mr. Hansen was working as well as on the steel beams, presenting a constant slipping hazard.

The facts, therefore, as found by the Court and which go to make up the elements of negligence are clearly present. In other words, we have a ship in almost an unseaworthy condition where a capacity load of steel beams are stowed over all the available deck space with no walkways provided; where the beams shift due to improper lashings; where there is oil on them and where after the beams shifted no walkways were provided, and men are expected and ordered to walk over and upon these dangerous beams upon which there is a certain amount of oil, and as a result of this combination of factors the plaintiff slipped, caught his hand on a line and had it mangled. As stated above, the facts as found by the Court are amply supported by the evidence.

THE LAW.

The principal argument of the appellant is that under the Jones Act the facts as found do not provide a basis for an application of this Act to the facts of this case.

Under the Jones Act, which is to be liberally construed,

Torgerson v. Hutton (N.Y.), 1935 A.M.C. 195,

the failure of the steamship company to provide seamen with a safe place to work is clearly actionable, and any act of negligence on the part of the employer which proximately contributes to an injury sustained by a seaman renders the steamship company liable to an action for damages.

Cortes v. Baltimore Lines, 287 U. S. 367.

It is of course elementary that aboard ship that a seaman must at all times obey the commands of his superior officer such as a Boatswain and that he has no alternative but to obey.

Sanders v. South Atlantic Co., 1934 A.M.C. 1394.

The theory of the plaintiff in the trial of this case, which was sustained by the findings of fact, is that there were a combination of factors which put together constituted negligence on the part of the defendant company. These factors are

THE DECK CARGO OF STEEL BEAMS WAS IMPROPERLY STORED.

The steamship company, at its risk, chose to carry a capacity deck cargo of steel beams. These beams had very meager lashings, consisting of two *temporary* lashings, according to the testimony of the Boatswain, to which reference has heretofore been made, and four lashings according to the port captain employed by the company. In any event they were not shored, which would have been the proper way to stow the beams. It is true that the vessel encountered some rough weather but rough weather in January on the Pacific Ocean is something that is normally to be expected. If the defendant chose to stow this heavy load of beams on deck and in a manner a sea would cause them to spread all over the deck, that was the company's risk. Improper stowage of cargo on deck or in the hold which results in injuries is an element of negligence under the Jones Act.

Hansen v. U. S., 1933 A.M.C. 472;
Beadle v. Spencer, 298 U. S. 123;
Anelich v. "Arizona", 298 U. S. 110.

PERMITTING OIL ON DECK IS NEGLIGENCE.

2. An element of negligence is permitting oil or other slippery substances to remain where seamen are expected or ordered to work. That this is an element of negligence under the Jones Act, we believe, is evident. The testimony to which reference has been made is that there was a great deal of oil on the deck im-

mediately forward of where the plaintiff was working and in addition to that there was oil on these beams over which plaintiff had to walk in putting the stopper on the block as he was directed to do by the Boatswain. The following cases support this statement:

Becker Steamship Co. v. Snyder, 166 N. E. (Ohio) 645;

Sanders v. South Atlantic Co., 1934 A.M.C. 1394;

Sandberg v. U. S. A., 1936 A.M.C. 1281.

APPELLANT COMPANY HAD DUTY TO SUPPLY PLAINTIFF WITH SAFE PLACE TO WORK.

3. Under the Jones Act the defendant steamship companies must at all times supply the seaman with a safe place to work.

Hansen v. Luckenbach Steamship Co., 1933 A.M.C. 764.

"A seaman assumes the risks normally incident to his calling, *but not that of negligent failure to provide a seaworthy ship and safe appliances.*"

"Arizona" v. Anelich, 298 U. S. 110.

Seamen do not assume the risk of an unsafe place to work.

Reylem v. S. P. Co., 1937 A.M.C. 137;

Beadle v. Spencer, 298 U. S. 124.

CONCLUSION.

We therefore respectfully submit that the findings of the Court are amply supported by the record and that these findings support a cause of action under the Jones Act. The defendant steamship company chose at its peril to load a large and heavy deck load occupying all of the deck space. This deck load was so insecurely lashed that it fell apart and spread all over the deck; between the time that it was spread all over the deck and the four days it took to get to Honolulu no walkways were provided over the steel, which was in a very rough, uneven and dangerous condition, requiring people to walk on the edges of the steel. No lines or anything else were provided for the safety of the crew. In addition to that, oil was on the deck and on the steel, making it additionally hazardous to the seamen called upon to work in, on and around this deck load. These factors in our opinion and as found by the trial Court were amply sufficient to sustain the judgment entered herein.

We respectfully suggest therefore that the judgment should be affirmed.

Dated, San Francisco,
October 9, 1942.

ANDERSEN & RESNER,
Attorneys for Appellee.